



[6735-01]

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Simplified Proceedings

AGENCY: Federal Mine Safety and Health Review Commission

ACTION: Direct final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the “Commission”) is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977. On December 28, 2010, the Commission published a final rule which set forth procedures for simplified proceedings. The Commission implemented the simplified proceedings rule as a pilot program. After evaluating the pilot program, the Commission has determined that withdrawal of the simplified proceedings rule is necessary at this time.

DATES: This final rule is effective [Insert date 45 days after date of publication in the FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Commission will publish a timely withdrawal of this direct final rule in the Federal Register while the Commission considers appropriate action with respect to its simplified proceedings rule.

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Ave., NW, Suite 520N, Washington, DC 20004-1710.

Electronic comments should state “Comments on Simplified Proceedings” in the subject line and be sent to RulesComments@fmshrc.gov.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935.

SUPPLEMENTARY INFORMATION:

A. Background

On December 28, 2010 (75 FR 81459), the Commission published in the Federal Register a final rule to simplify the procedures for handling certain civil penalty proceedings. The Commission explained that since 2006, the number of new cases filed with the Commission had dramatically increased. The simplified procedures were intended to help the Commission manage its burgeoning caseload by streamlining the administrative process for the Commission’s simplest cases. The Commission implemented the rule as a pilot program.

In evaluating the efficacy of the pilot, the Commission determined that the simplified proceedings rule has not operated as intended. The Commission had anticipated that streamlined procedures would better support settlement. For instance, discovery is not permitted under the simplified proceedings rule, except as ordered by a Judge. 29 CFR 2700.107. Rather, the simplified procedures require a mandatory disclosure of information by parties (29 CFR 2700.105), followed by a mandatory pre-hearing conference that requires in part a discussion of settlement of the case. 29 CFR 2700.106. It appears, however, that simplified proceedings settle at essentially the same

rate as other civil penalty proceedings governed by conventional procedures.

Moreover, the Commission determined that the compressed timeframes set forth in the simplified proceedings rule had unintended negative consequences. The simplified proceedings rule sets forth timeframes that are more abbreviated than those set forth in conventional proceedings for such matters as the disclosure of information by the parties, the conducting of a pre-hearing conference, and the conducting of a hearing. As a consequence of meeting these requirements, the Commission's simplest cases, which were designated as simplified proceedings, were often given priority over more complex cases, which were not designated as simplified proceedings. In addition, the Commission's resources were disproportionately diverted to its simplest cases.

Based upon its evaluation of the simplified proceedings pilot program, the Commission has reconsidered the utility of a special set of procedures for its simplest cases at the present time. The Commission's overall caseload has significantly decreased since the simplified proceedings rule was promulgated. Moreover, parties may request on a case-by-case basis that the Commission adapt the Commission's conventional procedures as necessary to expedite or simplify the processing of a case.

B. Notice and Public Procedure

1. Executive Orders:

The Commission is an independent regulatory agency under section 3(b) of Executive Order ("E.O.") 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993); E.O. 13563 (Jan. 18, 2011), 76 FR 3821 (Jan. 21, 2011); E.O. 13771 (Jan. 30, 2017), 82 FR

9339 (Feb. 3, 2017); E.O. 13777 (Feb. 24, 2017), 82 FR 12285 (Mar. 1, 2017); and E.O. 13132 (Aug. 4, 1999), 64 FR 43255 (Aug. 10, 1999).

The Commission has determined that this rulemaking does not have “takings implications” under E.O. 12630 (Mar. 15, 1988), 53 FR 8859 (Mar. 18, 1988).

The Commission has determined that these regulations meet all applicable standards set forth in E.O. 12988 (Feb. 5, 1996), 61 FR 4729 (Feb. 7, 1996).

2. Statutory Requirements:

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (“APA”) do not apply to rules of agency procedure (5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comment until [Insert date 30 days after date of publication in the FEDERAL REGISTER].

The Commission has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (“RFA”) (5 U.S.C. 601 et seq.), because the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Commission has determined that this rule is not a “major rule” under the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) (5 U.S.C. 804(2)).

The Commission has determined that the Paperwork Reduction Act (“PRA”) (44 U.S.C. 3501 et seq.) does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act (“CRA”) (5 U.S.C. 801 et seq.) does not apply because, pursuant to 5 U.S.C. 804(3)(C), these rules are rules of agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

The Commission has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment requiring an environmental assessment under the National Environmental Policy Act (“NEPA”) (42 U.S.C. 4321 et seq.).

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of the Unfunded Mandates Reform Act (“UMRA”) (2 U.S.C. 1532 et seq.).

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

Accordingly, 29 CFR part 2700 is amended as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

Subpart J – [Removed and Reserved]

2. Subpart J, consisting of §§ 2700.100 through 2700.110, is removed and reserved.

Dated: October 7, 2019.

Marco M. Rajkovich, Jr.

Chairman, Federal Mine Safety and Health Review Commission
[FR Doc. 2019-22257 Filed: 10/10/2019 8:45 am; Publication Date: 10/11/2019]